

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff(s),

v.

FREDERICK VERNON WILLIAMS,

Defendant(s).

Case No. 2:12-CR-463 JCM (VCF)

ORDER

Presently before the court is *pro se* defendant Frederick Vernon Williams's application for leave to amend defendant's objection to the magistrate's report and recommendation ("R&R") denying defendant's motion for severance of counts and defendants. (Doc. # 374). The government has filed a response, (doc. # 382), and defendant has filed a reply, (doc. # 401).

Also before the court is defendant Williams's motion *in limine*. (Doc. # 381). The government has filed a response, (doc. # 383), and defendant has filed a reply, (doc. # 403).

I. Background

Defendant Williams¹ is awaiting trial on charges of false citizenship, 18 U.S.C. § 911, false statement in application for passport, 18 U.S.C. § 1542, aggravated identity theft, 18 U.S.C. § 1028A(a)(1), conspiracy, 18 U.S.C. § 1349, and mail fraud, 18 U.S.C. § 1341.

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¹ There are two defendants in this case with the last name Williams: Frederick and Denise Williams. For the purposes of this order, "defendant Williams" will always refer to defendant Frederick Williams.

1 Because defendant Williams is proceeding *pro se*, his filings are numerous and difficult to
2 follow. The court has done its best to identify the salient points and will address each motion and
3 argument in the manner most convenient for it.

4 On June 24, 2013, defendant Williams filed a motion for severance of counts and
5 defendants. (Doc. # 89). Defendant Williams asked the court to sever the counts in this case, as
6 (a) “the offenses charged seem to [be] divide[d] into two groups: 1) immigration-related fraud and
7 2) unemployment fraud,” (b) “[t]hese two groups of offenses are not similar in character nor are
8 they based on the same act or transaction,” (c) “[t]he Government will be introducing evidence at
9 trial which tends to support the notion that Williams was involved in fraudulent conduct as to both
10 groups of offenses,” and (d) “[i]t is logical to assume that the jury will likely find Williams more
11 likely to have committed the unemployment fraud after hearing evidence regarding the
12 immigration-related fraud.” (Doc. # 89).

13 The government argued that the superseding indictment filed on April 16, 2013, illustrated
14 four separate events that gave rise to the charges against defendant Williams and that these four
15 events and the resulting charges are sufficiently connected to make joinder proper. (Doc. # 97).

16 On September 25, 2013, the magistrate judge released an order and a report and
17 recommendation. (Doc. # 120). The magistrate judge ordered that defendant’s motion for
18 severance of counts and defendants be denied without prejudice. (Doc. # 120). The magistrate
19 judge also recommended that defendant Williams’s motion to suppress the search warrant be
20 denied. (Doc. # 120).

21 On November 27, 2013, defendant Williams filed an objection to the magistrate judge’s
22 order denying defendant’s motion for severance of counts and defendants and to the magistrate
23 judge’s report and recommendation. (Docs. ## 169, 170). The government filed a response to the
24 defendant’s objections to the report and recommendation on December 16, 2013. (Doc. # 179).
25 Defendant Williams did not file a reply.

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1 On May 20, 2014, the government filed a third superseding indictment. (Doc. # 240). On
 2 May 30, 2014, this court adopted the magistrate judge's report and recommendation in full and
 3 denied defendant Williams's motion to suppress the search warrant.² (Doc. # 261).

4 Defendant's arraignment took place on May 28, 2014. (Doc. # 255). Local Rule 12–
 5 1(a)(1) provides for the filing of pretrial motions within thirty days of arraignment. LR 12–1.
 6 Thus, this court ordered that “any and all pre-trial motions and notice of defense” be filed by June
 7 28, 2014. (See doc. # 260). As a result, defendant Williams was given until June 28, 2014, to file
 8 pretrial motions. (Doc. # 260).

9 On December 3, 2014, approximately five months after the pretrial motion deadline had
 10 passed, defendant Williams filed the instant motion to amend his objections to the magistrate
 11 judge's report and recommendation. Defendant claims that the government's third superseding
 12 indictment, (doc. # 240), “changed significantly” the “landscape of this case” and necessitated his
 13 filing of amended objections. (Doc. # 374).

14 On November 10, 2014, the government served defendant Williams with notice of its intent
 15 to introduce evidence of an incident whereby defendant sought to defraud his life insurance
 16 company by claiming he had passed away and by attempting to collect on his life insurance policy.
 17 (Doc. # 356). This evidence includes the defendant's application for life insurance, the defendant's
 18 application for reinstatement, a recorded phone call made by defendants Frederick and Denise
 19 Williams to the life insurance company, and various letters regarding the defendant's life insurance
 20 policy. (See docs. ## 356, 383).

21 Subsequently, on December 16, 2014, defendant filed the motion *in limine* currently before
 22 the court, seeking to suppress any evidence relating to the aforementioned life insurance policy.
 23 Defendant claims that any such evidence would violate Federal Rule of Evidence (“FRE”) 404(b),
 24 or in the alternative, FRE 403.

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28 ² The court also considered and adopted a number of other recommendations the
 magistrate judge made, which are not pertinent to the instant motion. (See doc. # 261).

1 **II. Discussion**

2 Defendant Williams asks this court for leave to amend his objection to the magistrate
3 judge's R&R, as well to prevent the government from introducing evidence at trial relating to the
4 defendant's life insurance policy. These motions will be addressed in turn.

5 As an initial matter, the court acknowledges that defendant filed these motions *pro se*.
6 Therefore, defendant's filings will be liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94
7 (2007); *Roy v. Lampert*, 465 F.3d 964, 970 (9th Cir. 2006) (stating that the *pro se* status of a
8 petitioner "informs and colors the lens through which we view the [petitioner's] filings").

9 *A. Defendant's motion for leave to amend his objection to the magistrate judge's R&R*

10 Defendant Williams presents his motion as one for leave to amend his objection to the
11 magistrate judge's report and recommendation. However, the entirety of the defendant's brief
12 focuses on whether this court should sever various counts and co-defendants. (*See* doc. # 374).
13 Indeed, defendant Williams concludes his motion by stating that he asks this court to "(1) sever
14 counts 1,2,3,8,28,29,30,32, & 33 from all remain counts; (2) sever Defendant Williams from his
15 co-defendant Denise Williams, Jacqueline Gentle and Carolyn Willis-Casey, and; (3) properly
16 sever counts 1,2,3,8,28,29,30,32, & 33 for trial against defendant Williams." (Doc. # 374).

17 It is clear that defendant's motion is not for leave to amend his objection, but a motion for
18 severance. Furthermore, Magistrate Judge Ferenbach has issued an order addressing defendant
19 Williams's previous motion for severance. (*See* doc. # 120). Therefore, defendant's motion might
20 also be considered a motion for this court to reconsider the magistrate judge's order denying
21 defendant's motion for severance. Defendant Williams argues, in essence, that this court should
22 sever the claims and defendants, or reconsider the magistrate judge's order, in light of the third
23 superseding indictment filed by the government on May 20, 2014. (*See* doc. # 240).

24 Under the Federal Rules of Criminal Procedure, the court may set a deadline for the parties
25 to make pretrial motions. Fed. R. Crim. P. 12(c)(1). A motion for the severance of charges or
26 defendants must be made prior to trial. Fed. R. Crim. P. 12(b)(3)(D). Defendant Williams's
27 arraignment took place one week after the government filed its third superseding indictment, at
28 which time a pretrial motion deadline was set. Defendant failed to file his motion to sever the

1 claims and defendants, or any motion to extend the deadline, during this period (from May 28,
 2 2014, to June 28, 2014). Therefore, the defendant's motion is untimely (as conceded by
 3 defendant), and the defendant must show good cause for the delay. *See* Fed. R. Crim. P. 12(c)(3).
 4 If good cause is not shown, defendant is deemed to have waived his claim, and this court need not
 5 address it. Fed. R. Crim. P. 12(c)(3).³

6 To show good cause, one must show both "(1) 'cause' for the failure to raise the claim on
 7 time, and (2) 'prejudice' resulting from the error." Fed. R. Crim. P. 12 advisory committee's note;
 8 *Shotwell Mfg. Co. v. United States*, 371 U.S. 341, 363 (1963); *Polizzi v. United States*, 550 F.2d
 9 1133, 1138 (9th Cir. 1976).

10 Defendant claims that there is good cause for the delay because a third superseding
 11 indictment was introduced which added additional charges. However, the deadline for pretrial
 12 motions was set after the third superseding indictment was filed. Defendant offers no explanation
 13 for why this motion was not filed sooner, or why he did not attempt to extend the pretrial motion
 14 deadline. In fact, when a co-defendant sought to continue the pretrial motions deadline during this
 15 period, defendant Williams would not agree to a stipulation of the continuance, even though it was
 16 unopposed by the government. (*See* doc. # 280). Therefore, defendant has failed to show good
 17 cause for the five month delay in filing his motion, and thus, the motion will be denied.

18 *B. Defendant's motion in limine*

19 "Although the Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the
 20 practice has developed pursuant to the district court's inherent authority to manage the course of
 21 trials." *Luce v. U.S.*, 469 U.S. 38, 41 n.4 (1980).

22 Judges have broad discretion when ruling on motions *in limine*. *Jenkins v. Chrysler Motors*
 23 *Corp.*, 316 F.3d 663, 664 (7th Cir. 2002); *United States v. Benzer*, No. 2:13-CR-18-JCM-GWF,
 24 2014 WL 6747151, at *1 (D. Nev. Dec. 1, 2014). However, "a motion *in limine* should not be
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 27 ³ Although Federal Rule of Criminal Procedure 12 no longer uses the term "waiver" in
 28 addressing the consequences of a party's failure to submit a motion before a set deadline, the
 advisory committee notes make clear that this is still the effect, and that the term "waiver" was
 omitted simply to avoid confusion over whether a determination that the defendant *intended* to
 relinquish his rights was necessary. Fed. R. Crim. P. 12 advisory committee's notes.

1 used to resolve factual disputes or weigh evidence.” *Goodman v. Las Vegas Metro. Police Dep’t*,
 2 963 F. Supp. 2d 1036, 1047 (D. Nev. 2013).

3 *In limine* rulings are provisional, and therefore do not bind the trial judge, who may change
 4 his or her mind during the course of a trial. *Ohler v. United States*, 529 U.S. 753, 758 n.3 (2000);
 5 *accord Luce*, 469 U.S. at 41 (noting that *in limine* rulings are always subject to change, especially
 6 if the evidence unfolds in an unanticipated manner). Furthermore, “[d]enial of a motion *in limine*
 7 does not necessarily mean that all evidence contemplated by the motion will be admitted at trial.
 8 Denial merely means that without the context of trial, the court is unable to determine whether the
 9 evidence in question should be excluded.” *Goodman*, 963 F. Supp. 2d at 1047.

10 Defendant claims that the government intends to introduce, among other things, evidence
 11 of his application with his life insurance company, Prudential, and of a recorded phone call to
 12 Prudential. Defendant claims that any evidence relating to his life insurance policy with Prudential
 13 is inadmissible character evidence under FRE 404(b). Defendant argues, in the alternative, that
 14 the probative value of any such evidence would be substantially outweighed by its prejudicial
 15 nature, and thus, such evidence is inadmissible under FRE 403. The government claims that such
 16 evidence is “inextricably intertwined” with the crimes charged in the indictment, and that such
 17 evidence falls under the exceptions provided in FRE 404(b)(2).

18 FRE 404(b)(1) provides that “[e]vidence of a crime, wrong, or other act is not admissible
 19 to prove a person’s character in order to show that on a particular occasion the person acted in
 20 accordance with the character.” Fed. R. Evid. 404. However, FRE 404(b)(2) states that such
 21 evidence may still be admissible if offered to show “motive, opportunity, intent, preparation, plan,
 22 knowledge, identity, absence of mistake, or lack of accident.” Fed. R. Evid. 404.

23 Evidence should not be considered “other crimes” evidence under FRE 404(b)(1) when
 24 such evidence is “inextricably intertwined” with evidence of the crimes charged. *United States v.*
 25 *Lillard*, 354 F.3d 850, 854 (9th Cir. 2003). This is because “[t]he policies underlying [FRE] 404(b)
 26 are inapplicable when offenses committed as part of a ‘single criminal episode’ become other acts
 27 simply because the defendant is indicted for less than all of his actions.” *United States v. Williams*,
 28 989 F.2d 1061, 1070 (9th Cir. 1993).

1 The government's third superseding indictment alleges: (1) that defendant Williams made
2 a false statement in an application for a passport; (2) that he falsely represented himself as a citizen
3 in an immigration petition for an alien fiancé and in an application for appointment as a notary
4 public; (3) that he knowingly stole money from the United States in the form of unemployment
5 benefits, Social Security disability benefits, federal student aid grants, United States Department
6 of Agriculture Supplemental Nutrition Assistance Program benefits, and Medicaid benefits; and
7 (4) that he conspired to commit, and committed, mail fraud in relation to obtaining unemployment
8 insurance benefits.

9 The government now seeks to introduce evidence of an entirely separate incident, whereby
10 the defendant allegedly attempted to defraud his life insurance company. The government claims
11 that FRE 404(b) does not prohibit the introduction of this evidence because this incident is
12 "inextricably intertwined" with the crimes charged against the defendant. This argument must fail.

13 In *Lillard*, the Ninth Circuit stated that evidence is "inextricably intertwined if it constitutes
14 a part of the transaction that serves as the basis for the criminal charge." *Lillard*, 354 F.3d at 854.
15 In that case, the court found that the defendant "stole [] cocaine from the very shipment that
16 provided the basis for his involvement in the conspiracy to possess and distribute cocaine," and
17 thus, evidence that the defendant stole cocaine was inextricably intertwined with the conspiracy
18 charge. *Id.*

19 Defendant's false statements to his life insurance company do not serve the basis for, and
20 are in no way "inextricably intertwined" with, the government's charges. Each of the
21 aforementioned charges involves making misrepresentations to, or stealing money from, various
22 public bodies. Whereas the defendant's conduct in *Lillard* had a direct link to the crimes charged
23 against him, here the defendant's life insurance policy is entirely removed from the government's
24 charges. The defendant's false statements to his life insurance company were not, in any sense,
25 part of the transaction giving rise to the government's charges.

26 The similarity between the conduct alleged in the indictment and the other acts alleged
27 does not render the other acts "inextricably intertwined" with those events surrounding the
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1 indictment. Indeed, character evidence is most prejudicial when the other acts are similar to those
2 charged against the defendant.

3 Furthermore, unlike in *Williams*, the defendant's other acts do not provide "necessary
4 context for" the charges against the defendant. *See Williams*, 989 F.2d at 1070. And unlike in
5 *Lillard*, the events surrounding the life insurance policy are not so closely related to the charges
6 against the defendant that they can be considered a "single criminal episode." *See Lillard*, 354
7 F.3d at 854–55.

8 The government also claims that evidence relating to the defendant's life insurance policy
9 is admissible under FRE 404(b)(2), as it tends to show "motive, opportunity, intent, preparation,
10 plan, knowledge, identity, absence of mistake, or lack of accident."

11 Under Ninth Circuit precedent, "[s]uch evidence may be admitted if: (1) the evidence tends
12 to prove a material point; (2) the other act is not too remote in time; (3) the evidence is sufficient
13 to support a finding that defendant committed the other act; and (4) (in certain cases) the act is
14 similar to the offense charged." *United States v. Bailey*, 696 F.3d 794, 799 (9th Cir. 2012).

15 The government "has the burden of proving that the evidence meets all of the above
16 requirements." *United States v. Arambula–Ruiz*, 987 F.2d 599, 602 (9th Cir. 1993). "If the
17 evidence meets this test under Rule 404(b), the court must then decide whether the probative value
18 is substantially outweighed by the prejudicial impact under Rule 403." *United States v. Romero*,
19 282 F.3d 683, 688 (9th Cir. 2002).

20 The government provides two specific examples of how the defendant's application for life
21 insurance tends to prove a material point in this case: (1) the application for life insurance states
22 that his father was in "good health," when he stated that his father was deceased in his passport
23 application, and (2) the application for reinstatement states that the defendant worked for "Luna
24 Consulting," a company that the government contends was a conduit for the defendant's
25 unemployment insurance benefits scheme. This court agrees.

26 Furthermore, this court finds that the other elements are satisfied here. The alleged life
27 insurance fraud occurred shortly after the period in which the defendant was allegedly carrying
28 out unemployment benefit fraud (possibly within two months). Also, given the applications and

1 Prudential's letter to Denise Williams indicating that they had been informed that Frederick
2 Williams had passed away, (*see* doc. # 356, ex. A), there is sufficient evidence that the alleged life
3 insurance fraud occurred. The life insurance fraud also seems quite similar to some of the offenses
4 charged, as they both allegedly involve Frederick and Denise "in a conspiracy to defraud by
5 making false claims of benefit entitlement." The false claims in both instances are also regarding
6 an individual's personal status (*e.g.*, whether someone is a citizen, whether someone is alive, etc.).

7 However, the government then asserts that the rest of the evidence surrounding the alleged
8 life insurance fraud scheme is admissible, as it tends to show "motive, opportunity, intent,
9 preparation, plan, knowledge, identity, absence of mistake, or lack of accident," without
10 identifying which of these actually apply. This conclusory assertion by the government fails to
11 demonstrate that evidence relating to the actual fraud tends to prove a material point. Indeed, this
12 court fails to see how informing the jury of defendant's life insurance fraud scheme would tend to
13 benefit the government's position beyond reflecting on the defendant's character.

14 Therefore, the defendant's life insurance applications are admissible only to the extent that
15 they show (1) an independent link between the defendant and Luna Consulting, and (2) relevant
16 contrasts between the defendant's life insurance application and passport application. This court
17 rejects defendant's FRE 403 claim with respect to this evidence. Such evidence certainly has
18 probative value and does not pose a risk of unfair prejudice when it is disassociated from other
19 evidence suggesting that the defendant lied about passing away to collect life insurance proceeds.

20 Furthermore, all other evidence surrounding the defendant's life insurance policy,
21 including the recorded phone call made by defendants Frederick and Denise Williams to
22 Prudential, is inadmissible character evidence. Unless, and until, the government identifies
23 specifically how such evidence shows "motive, opportunity, intent, preparation, plan, knowledge,
24 identity, absence of mistake, or lack of accident," this court finds that such evidence merely reflects
25 upon the defendant's character, and that the probative value of such evidence would be
26 substantially outweighed by its unquestionably prejudicial nature.

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1 **III. Conclusion**

2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for
3 leave to amend his objection to the magistrate's R&R, (doc. # 374), be, and the same hereby, is
4 DENIED.

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants' motion *in*
6 *limine*, (doc. # 381), be, and the same hereby, is GRANTED in part and DENIED in part, consistent
7 with the foregoing.

8 DATED March 26, 2015.

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12 UNITED STATES DISTRICT JUDGE
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